87-137

No. -

Supreme Court, U.S.
FILED
JUL 22 1987
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1987

STEPHEN C. MORIN,
APPELLANT,

v.

STEVEN PETRARCA,
APPELLEE.

On Appeal From the Supreme Court Of the State of Rhode Island

JURISDICTIONAL STATEMENT

JOSEPH E. MARRAN, JR., LTD.
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Attorneys for Appellant

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Blanchard Press, Inc., Boston, Mass. — Law Printers [617] 426-6690

I

QUESTIONS PRESENTED

I. In abolishing the common law actions for alienation of affections and criminal conversation, did the Rhode Island General Assembly deny the Appellant due process of law by giving the Act immediate effect, with no provision for seasonable commencement of previously accrued causes of action?

II. By allowing some previously accrued causes of action to be maintained beyond the effective date of the abolishing Act, while causing other, similarly situated causes to be dismissed, did the Rhode Island General Assembly deprive the Appellant of his right to equal protection?

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In the
Supreme Court of the United States

OCTOBER TERM, 1987

No. -

STEPHEN C. MORIN,
APPELLANT,

v.

STEVEN PETRARCA,
APPELLEE.

On Appeal From the Supreme Court
Of the State of Rhode Island

JURISDICTIONAL STATEMENT

This appeal is taken from the Order of the Supreme Court of the State of Rhode Island, entered on April 24, 1987, denying and dismissing an appeal from the Order of the Superior Court For The County of Kent dismissing the Appellant's causes of action for alienation of affections and criminal conversation, and denying his motion for certification of certain constitutional issues to the Supreme Court of the State of Rhode Island.

Appellant submits herewith the Jurisdictional Statement as required by Rule 15 of the Rules of the Supreme Court of the United States to show that this Honorable Court has jurisdiction of the appeal, and that substantial federal questions are presented.

Opinion Below

No opinion was delivered by the Supreme Court of the State of Rhode Island. A copy of the Order denying and dismissing the Appellant's appeal thereto, Appeal No. 86-284, is reprinted as Appendix A of this Jurisdictional Statement. Copies of the Order of the Superior Court for the County of Kent denying the Appellant's motion for certification to the Supreme Court of the State of Rhode Island and dismissing his complaint in C.A. No. K 86-321 are reprinted herein as Appendices B and C, respectively.

Jurisdiction

This action was brought in the Superior Court of the State of Rhode Island for the County of Kent upon the Appellant's complaint for alienation of affections and criminal conversation. His complaint was dismissed therein, and his motion for certification to the Supreme Court of the State of Rhode Island denied by Order entered June 13, 1986. Appeal was timely taken to the Supreme Court of the State of Rhode Island, which thereafter, on April 24, 1987, entered its Order denying and dismissing that appeal.

Notice of Appeal to the Supreme Court of the United States was filed with the Clerk of the Supreme Court of the State of Rhode Island and the Clerk of the Superior Court for the County of Kent on June 29, 1987, with copies thereof to Counsel for the Appellee and to the Office of the Attorney General of the State of Rhode Island.

The jurisdiction of this Honorable Court to review the judgment of the Supreme Court of the State of Rhode Island by direct appeal is conferred by Title 28 United States Code §1257(2).

Statute Involved

The Rhode Island statute challenged by the Appellant on Fourteenth Amendment grounds is entitled "An Act Relating to Causes of Action," Rhode Island General Laws, Chapter 9-1, and is reprinted herein as Appendix D in the form in which it first appeared when passed by the Rhode Island General Assembly on June 14, 1985 as §1 Public Laws of Rhode Island, 1985, Chapter 123.

Constitutional Provisions Involved

AMENDMENT XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case

The Appellant brought a complaint in the Superior Court of the State of Rhode Island for the County of Kent on April 8, 1986, alleging that "over a long period of time prior to early April, 1985, and subsequent thereto, even up to the present date," the Appellee, Steven Petrarca had engaged in certain acts with the Appellant's wife[1] which gave rise to causes of action for alienation of affections and criminal conversation.

The Challenged Statute. After the Appellant's causes of action had accrued, but before he could bring his complaint[2]

[1] The Appellant and his wife were divorced by final decree of the Family Court of the State of Rhode Island for the County of Kent entered on June 24, 1986 in C.A. K 85-0457. She married the Appellee shortly thereafter.

[2] R.I.G.L. § 9-1-14 provided a one (1) year statute of limitations at the time Appellant's cause of action accrued.

the Rhode Island General Assembly passed §1 Public Laws of Rhode Island, 1985, Chapter 123, which amended General Laws of Rhode Island §9-1-14 by eliminating all reference to the period of limitations then governing actions for alienation of affections and criminal conversation.[3] This enactment also amended Rhode Island General Laws §9-1 by inserting a provision abolishing the causes of action for alienation of affections and criminal conversation.[4] Finally, this enactment recited that its provisions "...shall take effect upon passage, and shall be applied prospectively only and shall not be construed to abolish any action now pending in any court of the state including but not limited to any case presently on appeal to the Supreme Court of this State or any federal court or any case which may be remanded by the Supreme Court of this State or any federal court to a lower court for further proceedings."[5]

The Proceedings Below. On April 24, 1986 the Appellee moved the Kent County Superior Court to dismiss the Appellant's complaint, citing General Laws of Rhode Island §9-1-42, as amended, as controlling over the case. Appellant filed his motion to certify certain constitutional questions to the Supreme Court of the State of Rhode Island, and the parties submitted their respective memoranda.[6]

On June 9, 1986, upon the memoranda of the parties and after brief oral argument, the Kent County Superior Court denied the Appellant's motion for certification to the Supreme Court, and granted the Appellee's motion to dismiss the Appellant's cause of action. Appeal was timely taken therefrom to the Supreme Court of the State of Rhode Island.

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[3] §1 P.L.R.I. 1985, Chap. 123, Sec. 1.

[4] §1 P.L.R.I. 1985, Chap. 123, Sec. 2.

[5] §1 P.L.R.I. 1985, Chap. 123, Sec. 3.

[6] The Appellant's "Memorandum In Opposition of Motion To Dismiss" in Kent County Superior Court cites and refers extensively to the Fourteenth Amendment, as well as to provisions of the Constitution of the State of Rhode Island, the General Laws of Rhode Island, and supporting cases, arguing that the provisions of § 9-1-42, as amended on June 14, 1985, are repugnant to his rights of due process and equal protection.

Pursuant to Rhode Island Supreme Court Rule 16, the parties submitted statements of their respective cases and brief summaries of the issues to be argued on appeal.[7] Once again, the Appellant invoked the Fourteenth Amendment and argued that the lower court's application of §9-1-42 to his previously accrued cause of action "deprived him of a property right without due process of law and denied him equal protection of the law."[8]

On April 22, 1987 the parties were heard in oral argument before a three member panel of the Supreme Court of the State of Rhode Island pursuant to a previous Order dated February 16, 1987, compelling the Appellant to appear and show cause why his appeal should not be denied and dismissed. On April 24, 1987, Order entered finally denying and dismissing the appeal, the Court opining that upon oral argument and review of the parties' memoranda no cause had been shown.

Federal Questions Presented Are Substantial

The core issue presented by this appeal is that of state legislative power *versus* individual property rights — the question can be phrased more specifically in terms of when does an individual's property right in a cause of action become "vested" so as to warrant Fourteenth Amendment protection?

The question is of universal import throughout the several states as it relates to those rights obtaining to an individual at the moment his cause of action accrues, and the protection to be afforded him against the invasion of those rights by arbitrary state action, either upon the state's failure to provide the individual with due process of law, or upon the state's classification of individuals with respect to the operation of its laws upon them.

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[7] "...this document shall be concise, not exceeding five pages." Rhode Island Supreme Court Rule 16.

[8] Appellant's "Statement of the Case," Rhode Island Supreme Court Appeal No. 86-0284.

Due Process. That an accrued cause of action is a property interest worthy of protection under the Fourteenth Amendment is well-settled. *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950); *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 420 (1982). It is equally well-recognized that a state legislature may not authorize the deprivation of a property interest, once conferred, without appropriate procedural safeguards, and that the adequacy of those procedures must be analyzed in constitutional terms. *Vitek* v. *Jones*, 445 U.S. 480, quoting *Arnett* v. *Kennedy*, 416 U.S. 134 (1974).

The Appellant submits that causes of action accrued to him on April 9, 1985, and that the Rhode Island General Assembly's abolition of those causes of action, effective upon passage on June 14, 1985 cannot be held to have affected his right to bring his causes of action within the originally prescribed one-year period of limitations in the absence of some alternate provision by the General Assembly for an otherwise reasonable period of time in which he might have acted. This final and immediately effective preemption of the Appellant's property rights in accrued causes of action flies in the face of fundamental notions of due process, and stands in contravention of Rhode Island statutory guarantees upon which he reasonably might have relied.[9] The Constitution does not speak in terms of "vested rights", but it has been suggested that "...the concept it expresses is that of a present fixed interest which in right reason and natural justice should be protected against arbitrary state action — an innately just and imperative right that an enlightened free society, sensitive to inherent and irrefragable individual rights cannot deny. Such seems to be the principle of *Campbell* v. *Holt*, 115 U.S. 620 (1885)." *Pennsylvania Greyhound Lines, Inc.* v. *Rosenthal*, 14 N.J. 372, 102 A.2d 587 (1954), cited in *Parsippany Hills Assoc.* v. *Rent Leveling Bd.*, __ N.J. __, 476 A.2d 271, 275 (1984).

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[9] General Laws of Rhode Island § 43-3-1. Effect of repeal on prior rights and proceedings. See also, General Laws of Rhode Island § 43-3-1. English statutes as common law, both reprinted herein as Appendix D.

Campbell v. *Holt* stands for the proposition that a state legislature may not give retroactive application to amendments to its statutes of limitations so as to deprive an individual of a vested right in real property. Similarly, a legislature may not operate prospectively with respect to amendment of its limitations statutes unless such an amendment allows the individual possessed of an accrued cause of action a reasonable time to act thereupon. *Atchafalaya Land Co.* v. *F. B. Williams Cypress Co.*, 258 U.S. 190 (1916). Also, the right to compensation for damage to property, once it has accrued, may not be defeated retroactively. *Ettor* v. *Tacoma*, 228 U.S. 148 (1912). It is submitted thus, that the General Assembly may not take away an accrued cause of action, whether it springs from contract, tort, or from the principles of the common law, without preserving the owner his substantial right to redress by some effective procedure. *Gibbes* v. *Zimmerman*, 290 U.S. 326 (1921).

Equal Protection. The second question brought by this appeal is whether the distinction made between causes of action brought, and causes of action accrued, in terms of the Rhode Island General Assembly's allowance of the former beyond the effective date of §1 Public Laws of Rhode Island, 1985, Chapter 123 survives the challenge that such a distinction is repugnant to the Equal Protection Clause of the Fourteenth Amendment.

The statute creates three classes of individuals with respect to its operation:

(A) Individuals with causes of action accrued and timely brought between June 14, 1984 and June 14, 1985.

(B) Individuals with causes of action accrued between June 14, 1984 and June 14, 1985, and brought after June 14, 1985.

(C) Individuals with causes of action acruing after June 14, 1985.

The Appellant does not challenge the right of the Rhode Island General Assembly to further the legitimate interests of the State and its citizenry by abolishing the common law actions for alienation of affections, criminal conversation and seduction, and that with respect to individuals falling into Category C above, that there has been no denial either of Due Process or Equal Protection. *Martinez* v. *California,* 444 U.S. 277 (1980).

Turning, however, to Categories A and B, the treatment accorded those who share the fact of an accrued cause of action is radically disparate; individuals falling into Category A are allowed to maintain and prosecute their accrued causes of action, while those falling into Category B, including the Appellant, are summarily denied redress, regardless of the relative merits of the claims belonging to individuals in either category. This Honorable Court has held repeatedly that state-created classifications must bear a rational relationship to legitimate government objectives. *Schweiker* v. *Wilson,* 450 U.S. 221 (1981), *Lindsey* v. *Normet,* 405 U.S. 56 (1972). In terms of the Appellant's challenge to this statute on both due process and equal protection grounds, there is a serious question as to whether this statutory scheme is justified by the State's interest in *immediately* abolishing common law actions which had existed for centuries undisturbed. The statute randomly deprives certain individuals of vested property rights in accrued causes of action, and presents a high risk that meritorious causes of action will be arbitrarily terminated. Furthermore, the statute arbitrarily classifies individuals with accrued causes of action solely upon the basis of whether the individual was fortuitous enough to have brought his cause of action before June 14, 1985, the date the statute was passed and became immediately effective. There was no provision for the continuation of then-running periods of limitation, or any other reasonable period of time in which the Appellant might

have acted. Moreover, the statute operates in utter disregard of the provisions of Rhode Island General Laws §43-3-22 governing the effect of repeal on prior-accrued rights. The State's interest seems neither compelling nor substantial in consideration of the utter violence the statute does to fundamental due process and equal protection rights. Considering that actions for alienation of affections, criminal conversation and seduction may well be anachronisms in today's society, the statute does arguably serve to effect public policy. However, the mere tautological recognition that the General Assembly "did that which it intended to do," does not end the analysis under equal protection. This Court has an obligation to view the classificatory *system* in an effort to determine treatment accorded to classes as arbitrary. *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 420, 443 (BLACKMUN, J., concurring).

In this case the State of Rhode Island has statutorily converted similarly situated claims, sounding in the same common law actions and accruing within the same one-year period of time, into dissimilary ones, and then has used this arbitrary distinction as a basis for its classification. Regardless of the General Assembly's purpose in seeking to abolish these causes of action, the rationale behind the disequal treatment of similarly situated claims must amount to more than the exercise of a strained imagination. The connection between means and ends must have some objective basis. *Logan* v. *Zimmerman Brush Co.*, supra 443.

The Appellant respectfully submits that there is no rational basis for the classifications created by §1 Public Laws of Rhode Island, 1985, Chapter 123, and that said enactment should rightfully be struck down as repugnant to the Equal Protection Clause of the Fourteenth Amendment.

Conclusion

The federal questions presented by this appeal are substantial, and go to the very essence of the Fourteenth Amendment guarantees of Due Process and Equal Protection. It is therefore respectfully submitted that the questions raised herein are deserving of plenary consideration, with briefs on the merits and oral argument for their resolution, and thus, that probable jurisdiction should be noted.

Respectfully submitted,

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Attorneys for Appellant

* Attorney of Record

Date: July 21, 1987

Appendix A

0943d

SUPREME COURT
STATE OF RHODE ISLAND

No. 86-284-APPEAL

STEPHEN C. MORIN

v.

STEVEN PETRARCA

ORDER

This case was argued before a three-judge panel of this court on April 22, 1987 pursuant to an order directing the plaintiff to appear to show cause why his appeal should not be denied and dismissed.

After hearing the arguments of counsel and reviewing the memoranda submitted by the parties, it is the opinion of the court that no cause has been shown. Consequently, the plaintiff's appeal is denied and dismissed.

Entered as an Order of this Court this 24th day of April, 1987.

By Order,

s/ BRIAN BURNS
WALTER J. KANE, Clerk

Mrs. Justice Murray and Justice Shea did not participate.

Appendix B

STATE OF RHODE ISLAND
KENT, SC
SUPERIOR COURT

C.A. K 86-321

STEPHEN C. MORIN

v.

STEVEN PETRARCA

ORDER

This matter was in order for hearing before Mr. Justice DeRobbio on the defendant's motion to dismiss and for entry of judgment and on the plaintiff's objection thereto and motion for certification of the alleged constitutional issues to the Rhode Island Supreme Court; and after hearing thereon and in consideration thereof it is hereby

ORDERED

as follows:

1. That the plaintiff's complaint be and it hereby is dismissed;
2. That the plaintiff's motion for certification be and it hereby is denied;
3. That judgment may enter on the dismissal.

Enter:
s/ ERNEST W. RAPOSA,
Clerk.

By Order:
s/ ALBERT J. DEROBBIO,
Justice.

CERTIFICATION

I hereby certify that a copy of the within order has been mailed to Joseph E. Marran, Jr., Esquire, P.O. Box 1383, Pawtucket, Rhode Island, 02862, on June 12, 1986.

(s) DONNA M. SILVA

Appendix C

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS
SUPREME COURT

APPEAL NUMBER: 86-284

STEPHEN C. MORIN

v.

STEVEN PETRARCA

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that STEPHEN C. MORIN, the Appellant above-named, hereby appeals to the Supreme Court of the United States from the final Order of the Supreme Court of the State of Rhode Island dated April 24, 1987, denying and dismissing the Appellant's appeal from the Order of the Superior Court of the State of Rhode Island, holden in the County of Kent, whereby his cause of action, K 86-321, was dismissed.

This appeal is taken pursuant to Title 28 of the United States Code, Section 1257(2).

Notice is hereby given the Attorney General of the State of Rhode Island, moreover, that the provisions of Title 28 of the United States Code, Section 2403(b) may be applicable in this matter.

Dated this 26th day of June, 1987.

STEPHEN C. MORIN,
By His Attorney,

JOSEPH E. MARRAN, JR., LTD.
(s) JOSEPH E. MARRAN, JR.
JOSEPH E. MARRAN, JR.
P.O. Box 1383
Pawtucket, Rhode Island 02862

PROOF OF SERVICE — AFFIDAVIT

I, JOSEPH E. MARRAN, JR., Attorney of Record for Stephen C. Morin, Appellant herein, depose and say that on the 26th day of June, 1987, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States upon Gerald C. DeMaria, Esquire at the offices of Higgins, Cavanagh and Cooney, Esqs., 123 Dyer Street, Providence, Rhode Island 02903, counsel of record for the Appellee herein, and upon James E. O'Neil, Esquire, the Attorney General of the State of Rhode Island, at his office located at 72 Pine Street, Providence, Rhode Island 02903, by mailing same, first class postage prepaid, in compliance with Rule 28.3 and Rule 28.4(c) of the Rules of The Supreme Court of the United States.

(s) JOSEPH E. MARRAN, JR.
JOSEPH E. MARRAN, JR.

Subscribed and Sworn to before me at Pawtucket, Providence County, State of Rhode Island this 26th day of June, 1987.

(s) RUTH S. BASCOMBE
RUTH S. BASCOMBE, Notary Public
My Commission will expire on
June 30, 1991.
[SEAL]

Appendix D

§1 PUBLIC LAWS OF RHODE ISLAND, 1985, CHAPTER 123

85-H 5267A am

Approved Jun. 14, 1985.

AN ACT RELATING TO CAUSES OF ACTION

It is enacted by the General Assembly as follows:

SECTION 1. Section 9-1-14 of the General Laws in Chapter 9-1 entitled "Causes of Action" is hereby amended to read as follows:

9-1-14. Limitation of actions for words spoken or personal injuries. — Actions for words spoken shall be commenced and sued within one (1) year next after the words spoken, and not after. Actions for injuries to the person shall be commenced and sued within three (3) years next after the cause of action shall accrue, and not after. ~~No action shall be commenced or prosecuted for alienation of affections of a spouse, or any child of the plaintiff and such spouse, nor for the loss of or damages to any rights or privileges based upon the marital relationship between the plaintiff and such spouse more than one (1) year after the cause of action shall have accrued nor, in any event, after the plaintiff and such spouse have lived separate and apart for one (1) year or more.~~

SECTION 2. Chapter 9-1 of the General laws entitled "Causes of Action" is hereby amended by adding thereto the following section:

9-1-42. Causes of action abolished. — No civil action shall be commenced or prosecuted for alienation of affection, criminal conversation or seduction, and said causes of action are hereby abolished.

SECTION 3. This act shall take effect upon passage and shall be applied prospectively only and shall not be construed to abolish any action now pending in any court of the state including but not limited to any case presently on appeal to the supreme court of this state or any federal court or any case which may be remanded by the supreme court of this state or any federal court to a lower court for further proceedings.

R.I.G.L. §43-3-1. English statutes as common law. — In all cases in which provision is not made herein, such English statutes, introduced before the Declaration of Independence, which have continued to be practiced under as in force in this state, shall be deemed and taken as a part of the common law thereof, and remain in force until otherwise specially provided.

History of Section. G.L. 1896, ch. 297, §3; G.L. 1909, ch. 366, §3; G.L. 1923, ch. 419, §3; G.L. 1938, ch. 306, §1; G.L. 1956, §43-3-1.

R.I.G.L. §43-3-22. Effect of repeal on prior rights and proceedings.—The repeal of any statute shall in no case affect any act done, or any right accrued, acquired or established, or any suit or proceeding had or commenced in any civil case before the time when such repeal shall take effect.

History of Section. G.L. 1896, ch. 26, §16; G.L. 1909, ch. 32, §16; G.L. 1923, ch. 32, §16; G.L. 1938, ch. 309, §16; G.L. 1956, §43-3-22.

Supreme Court, U.S.
FILED
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No. 87-137

In The
Supreme Court of the United States
October Term, 1987

STEPHEN C. MORIN,

Appellant,

v.

STEVEN PETRARCA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF RHODE ISLAND

MOTION TO DISMISS

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QUESTIONS PRESENTED

I. Does the General Assembly of the State of Rhode Island have the constitutional authority to abrogate the common law cause of action for alienation of affection and criminal conversation?

II. Did the General Assembly of the State of Rhode Island deprive the Appellant of due process of law in enacting Rhode Island General Law § 9-1-42 which abolished the cause of action for alienation of affection and criminal conversation?

III. Did the General Assembly of the State of Rhode Island deprive the Appellant of equal protection of the law in enacting Rhode Island General Law § 9-1-42 which abolished the cause of action for alienation of affection and criminal conversation?

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III. The Rhode Island General Assembly did not deprive the Appellant of equal protection of the law in enacting Rhode Island General Law § 9-1-42 which abolished the cause of action for alienation of affection and criminal conversation.	10
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No. 87-137

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In The
Supreme Court of the United States
October Term, 1987

—o—

STEPHEN C. MORIN,

Appellant,

v.

STEVEN PETRARCA,

Appellee.

—o—

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF RHODE ISLAND

—o—

MOTION TO DISMISS

—o—

The Appellee, Steven Petrarca, pursuant to Rule 16.1 of the Rules of the Supreme Court of the United States respectfully requests that this Court dismiss the within Appeal from the Supreme Court of the State of Rhode Island.

—o—

JURISDICTION

Appellant has claimed that this Court has jurisdiction to review by direct Appeal the Judgment of the Supreme Court of the State of Rhode Island pursuant to the provisions of 28 U.S.C. § 1257 (2) which provides as follows:

> Section 1257. State Courts; Appeal; Certiorari.
>
> Final Judgments or Decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (2) By Appeal, where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties or laws of the United States and the decision is in favor of its validity.

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STATUTES INVOLVED

Appellee denies that this case involves the denial of a right protected by the Constitution of the United States and that furthermore, the Judgment of the Supreme Court of the State of Rhode Island rests on an adequate non-Federal basis.

> Rhode Island General Law § 9-1-42. Causes of action abolished.-No civil action shall be commenced or prosecuted for alienation of affection, criminal conversation or seduction, and said causes of action are hereby abolished.

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RULES OF THE SUPREME COURT OF THE UNITED STATES

Rule 16.1 of the Rules of the Supreme Court of the United States provides as follows:

> Within 30 days after receipt of the jurisdictional statement, unless the time is enlarged by the Court or a Justice thereof, or by the Clerk under the provisions of Rule 29.4, the appellee may file a motion to dismiss, or a motion to affirm. Where appropriate, a motion to affirm may be united in the alternative with a motion to dismiss, provided that a motion to affirm or dismiss shall not be joined with any other pleading.
>
> The Clerk shall not accept any motion so joined.
>
> (a) The Court will receive a motion to dismiss an appeal on the ground that the appeal is not within this Court's jurisdiction, or because not taken in conformity with statute or with these Rules.
>
> (b) The Court will receive a motion to dismiss an appeal from a state court on the ground that it does not present a substantial federal question; or that the federal question sought to be reviewed was not timely or properly raised and was not expressly passed on; or that the judgment rests on an adequate non-federal basis.
>
> (c) The Court will receive a motion to affirm the judgment sought to be reviewed on appeal from a federal court on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.
>
> (d) The Court will receive a motion to dismiss or affirm on any other ground the appellee wishes to present as a reason why the Court should not set the case for argument.

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STATEMENT OF THE CASE AND PROCEEDINGS BELOW

This action was initiated on April 8, 1986 in the Superior Court for the State of Rhode Island in the County of Kent. The Appellant brought a two count action alleging alienation of affection and criminal conversation. In response thereto, the Appellee filed a Motion to Dismiss pursuant to Rhode Island General Law (hereinafter "R.I.G.L.") § 9-1-42. By the clear and concise terms of R.I.G.L. § 9-1-42 and its accompanying comment, there shall be no cause of action for alienation of affection or criminal conversation in the State of Rhode Island after June 14, 1985. While the comment makes it clear that this prohibition is not to be applied retroactively to pending suits, it is just as clear that no such cause of action shall be initiated after June 14, 1985. The Appellant subsequently filed a Motion for Certification to the Supreme Court of the State of Rhode Island. On June 9, 1986, the Motion to Dismiss was granted and the Motion to Certify was denied. The Appellant timely appealed this decision to the Supreme Court of the State of Rhode Island. In accordance with Rhode Island Supreme Court Rule 16, both parties filed brief statements of their respective cases. On April 22, 1987, both parties presented oral argument to a three judge panel of the Supreme Court of the State of Rhode Island pursuant to an Order of February 16, 1987 which required the Appellant herein to appear and show cause why his Appeal should not be dismissed and denied. By order dated April 24, 1987, a mere two days after oral argument, the Supreme Court of the State of Rhode Island entered an Order dismissing and denying Appellant's Appeal stating that no cause had been shown.

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ARGUMENT

I. THE GENERAL ASSEMBLY OF THE STATE OF RHODE ISLAND CAN ABROGATE THE COMMON LAW CAUSE OF ACTION FOR ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION.

This Court, as early as 1929 in *Silver v. Silver*, 280 U.S. 117, 122, 50 S.Ct. 57, 74 L.Ed. 221 (1929), held that the "Constitution does not forbid the creation of new rights, or the abolition of old ones recognized by the common law, to attain a permissible legislative object." As stated in *Carr v. United States*, 422 F.2d. 1007, 1010 (4th Cir. 1970), "[t]here has been no indication that this is not the settled law on the question". See also *Duke Power Co. v. Carolina Env. Study Group*, 438 U.S. 59, 88 n. 32, 98 S.Ct. 2620, 57 L.Ed.2d 595 (1978).

By the enactment of R.I.G.L. § 9-1-42, the Rhode Island General Assembly statutorily abolished the common law causes of action for alienation of affection, criminal conversation and seduction. By the terms of *Silver v. Silver*, the only inquiry remaining should be whether this served a permissible legislative objective. There can be no question that the concepts of alienation of affection and criminal conversation are outdated and archaic. By the effective date of this statute, the vast majority of the states had already abolished this cause of action. In fact, even the Appellant in his Jurisdictional Statement admits that these "may well be anachronisms in today's society".

Is is simply a fact that due to the ever-evolving standards of society, the Rhode Island General Assembly was fulfilling a valid legislative objective in abrogating this cause of action. The only issue remaining is whether it did so in a constitutionally permissible manner.

II. THE GENERAL ASSEMBLY OF THE STATE OF RHODE ISLAND DID NOT DEPRIVE THE APPELLANT OF DUE PROCESS OF LAW IN ENACTING RHODE ISLAND GENERAL LAW § 9-1-42 WHICH ABOLISHED THE CAUSE OF ACTION FOR ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION.

The Fourteenth Amendment to the United States Constitution provides that no state shall deprive a person of "life, liberty, or property without due process of law". In this case, the Appellant claims that the accrual of his cause of action caused him to be vested with certain property rights which were taken away by the State without due process of law.

The Appellant advances two theories in support of his position that he was deprived of his property without due process of law. To begin with, the Appellant contends that the accrual of his cause of action vested in him certain rights which cannot be abridged without due process. Secondly, the Appellant contends that an accrued cause of action is a property interest worthy of due process protection.

In support of his contention that the accrual of his alienation of affection cause of action caused him to be vested in that action, Appellant relies primarily upon *Campbell v. Holt*, 115 U.S. 620, 6 S.Ct. 209, 29 L.Ed. 483 (1885). Appellant cites this case in support of the proposition that a present fixed interest should be protected from arbitrary state action. Appellant then proceeds to describe how the Court has used the vested rights analysis found in *Campbell v. Holt* to strike down various state actions. However, the Appellant's reliance is misplaced. Decisions which have invoked the vested rights analysis have involved rights vested in real property, contract, or in some other

fixed sum of money. These present fixed interests were said to stand independent of the statute that created them and could not be abridged by subsequent statute. *See, e.g., Ettor v. Tacoma,* 228 U.S. 148, 156, 33 S.Ct. 428, 57 L.Ed. 773 (1912).

Alienation of affection and criminal conversation are intentional torts. K. Kavanagh, *Alienation of Affections and Criminal Conversations: Unholy Marriage in Need of Annulment,* 23 Ariz. L. Rev. 323, 324 (1980). None of the cases relied upon and cited by Appellant hold that a right arising or deriving from a tort is a vested right. In fact, the Court in *Ettor v. Tacoma* expressly distinguished an action for an injury to property from an action based upon a tort.

Finally, this Court has consistently held that a property right is not created by rule of the common law. As stated by the Court in *Duke Power Co. v. Carolina Env. Study Group,* 438 U.S. 59, 88 n. 32, 98 S.Ct. 2620, 57 L.Ed.2d 595 (1978):

> Our cases have clearly established that "a person has no property, no vested interest, in any rule of the common law". *Second Employer's Liability Cases,* 223, U.S. 1, 50 (1912), quoting *Munn v. Illinois,* 94 U.S. 113, 134 (1877). The "Constitution does not forbid the creation of new rights, or the abolition of old ones recognized by the common law, to attain a permissible legislative object," *Silver v. Silver,* 280 U.S. 117, 122 (1929), despite the fact that "otherwise settled expectations" may be upset thereby. *Usery v. Turner Elkhorn Mining Co.,* 428 U.S. 1, 16 (1976).

Since the Appellant cannot have a vested interest in a tort claim, and since the Appellant cannot have a vested interest in the common law rule of law, the Appellant is in

essence asking this Court to find that he had a vested interest in his former wife's affections. For the same reasons that the cause of action for alienation of affection and criminal conversation are no longer favored in our society, it is obvious that this claim cannot succeed.

The Appellant's second due process argument is that an accrued cause of action creates a property interest worthy of protection under the Fourteenth Amendment. The Appellant relies upon *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950) and *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982). However, upon closer examination, it can be seen that neither of these cases embraces Appellant's proposal.

As previously stated, an action for alienation of affection and criminal conversation is a tort action. Neither *Mullane v. Central Hanover Bank & Trust Co.*, nor *Logan v. Zimmerman Brush Co.* involved a tort claim. *Mullane v. Central Hanover Bank & Trust Co.* involved notification of a trustee settlement of a trust while *Logan v. Zimmerman Brush Co.* involved the right to redress discrimination. Both cases involved the procedural exclusion of an individual from an entitlement which was then in existence. In this case, the Rhode Island General Assembly has simply abolished a cause of action. There is no entitlement from which the Appellant is being excluded. As such, procedural due process should not apply.

This is not to say that this Court has ruled that a cause of action sounding in tort can never be viewed as property protected by the Fourteenth Amendment. In *Martinez v. California*, 444 U.S. 277, 100 S.Ct. 553, 62 L.Ed.2d 481

(1980), it was held that a cause of action for wrongful death is arguably a species of property protected by the Due Process Clause. This case is instructive as to the standard of review applicable to a state's action in abolishing a cause of action. As Mr. Justice Marshall explained in his concurring opinion in *Pruneyard Shopping Center v. Robbins,* 447 U.S. 74, 92, 100 S.Ct. 2035, 64 L.Ed.2d 741 (1980), "[e]ven if a pre-existing state law remedy is a species of property protected by the Due Process Clause . . ., it would remain true that the State's interest in fashioning its own rules of tort law is paramount to any discernible federal interest, except perhaps an interest in protecting the individual citizen from state action that is wholly arbitrary or irrational."

As indicated, the Appellant must demonstrate that the actions of the Rhode Island General Assembly in abolishing the cause of action for alienation of affection and criminal conversation were wholly arbitrary or irrational. In other words, since the State of Rhode Island has a paramount interest in fashioning its own rules of tort law, the Appellant must demonstrate that the actions of the General Assembly in abolishing this cause of action were arbitrary or irrational to the extent that they were not reasonably related to the legitimate government purpose which was the abolition of this cause of action. The Appellant simply cannot meet this burden. As has already been discussed, the concept of alienation of affection and criminal conversation is outdated and archaic. The Rhode Island General Assembly, by taking the action that it did, had recognized this fact and was simply responding to the changing needs of society.

III. THE RHODE ISLAND GENERAL ASSEMBLY DID NOT DEPRIVE THE APPELLANT OF EQUAL PROTECTION OF THE LAW BY ENACTING RHODE ISLAND GENERAL LAW § 9-1-42 WHICH ABOLISHED THE CAUSE OF ACTION FOR ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION.

The Appellant contends that R.I.G.L. § 9-1-42 violates the Equal Protection Clause of the United States Constitution because it classifies similarly situated people in different manners. The Appellant argues that the classification has no rational relationship to any legitimate state goal and should therefore be struck down.

The level of scrutiny to be used in this matter focuses on whether the disparate treatment rationally furthers legitimate objectives of state law. *San Antonio School District v. Rodriguez,* 411 U.S. 1, 17, 93 S.Ct. 1278, 1288, 36 L.Ed.2d 16 (1973). This is because no fundamental right and no suspect classification is involved. *Pottratz v. Davis,* 588 F.Supp. 949, 955 (D.Md. 1984). The rational relationship standard of review reflects the judiciary's awareness that "it is up to legislatures, not courts, to decide on the wisdom and utility of legislation". *Ferguson v. Skrupa,* 372 U.S. 726, 729, 83 S.Ct. 1028, 1030, 10 L.Ed.2d 93 (1963). In other words, since this alleged classification does not penalize the exercise of any constitutional right, and since it does not create a suspect classification nor involve a fundamental interest, the alleged classification need not be justified by a compelling governmental interest. *Carr v. United States,* 422 F.2d. 1007, 1010 (4th Cir. 1970). Thus, a rigorous standard of review would be inappropriate. Rather, the alleged statutory classification comes with a presumption of constitutionality and it "will not

be set aside if any state of facts reasonably may be conceived to justify it''. *McGowan v. Maryland,* 366 U.S. 420, 426, 81 S.Ct. 1101, 1105, 6 L.Ed.2d 393 (1961).

The Rhode Island General Assembly in enacting R.I.G.L. § 9-1-42 was simply abolishing an archaic cause of action. The General Assembly recognized that the concepts of alienation of affection and criminal conversation are anachronisms in our society and took the necessary action. In seeking to abolish these causes of action as speedily as possible, the General Assembly simply ruled that no such causes of action could be initiated after the effective date of this legislation. Any classifications which this legislation might have created only furthered the stated legitimate legislative purpose.

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CONCLUSION

The Appellant has neither presented any substantial federal questions, nor has he successfully demonstrated that the actions of the Rhode Island General Assembly in enacting R.I.G.L. § 9-1-42 deprived him of equal protection or due process of law. The Rhode Island General Assembly was acting within its constitutional powers in abrogating the common law cause of action for alienation of affection and criminal conversation. This was a valid legislative object which was fulfilled in a constitutionally permissible manner.

For the reasons hereinabove cited, Appellee Steven Petrarca respectfully requests that this Court dismiss the instant Appeal.

Respectfully Submitted,

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